

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND
THE HONOLULU POLICE DEPARTMENT**

1. The parties to this Agreement are the United States of America and the Honolulu Police Department.

2. The United States of America is referred to hereinafter as the "United States." The Honolulu Police Department is referred to hereinafter as "HPD." Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12111 et seq., and Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12131 et seq., are collectively referred to hereinafter as the "ADA."

The parties hereby agree as follows:

FACTUAL AND JURISDICTIONAL BACKGROUND

3. HPD maintains a policy whereby applicants for the police department are automatically excluded from consideration for employment if such applicants use a hearing aid. Specifically, the continuous recruitment job announcement for a Metropolitan Police Recruit states that "Hearing loss attenuated by hearing aid is unacceptable."

4. The United States alleges that HPD is unable to demonstrate that the qualification standard described in ¶ 3 above is job-related for the position in question and consistent with business necessity. In support of this allegation, the United States relies, in part, on the presence of incumbent police officers employed by HPD who use a hearing aid to attenuate hearing loss and effectively meet their employment responsibilities.

5. The ADA applies to HPD because it is a person within the meaning of 42 U.S.C. § 12111(7) and an employer within the meaning of 42 U.S.C. § 12111(5)(a).

6. The United States alleges that HPD's hiring policy as described in ¶ 3 above imposes a per se ban on employment of persons with disabilities in violation of Title I and II of the ADA.

GENERAL AGREEMENT

7. The parties have determined that their respective interests can be met without engaging in protracted litigation to resolve this dispute and have therefore voluntarily entered into this Agreement.

8. HPD specifically agrees that it will:

(a) eliminate its policy of automatically excluding job applicants who use a hearing aid to attenuate hearing loss;

(b) implement a hiring policy in which job applicants who use a hearing aid are individually assessed on a case-by-case basis in order to determine eligibility for hiring;

(c) revise all publications, including websites, pertaining to any facet of employment, employment opportunities, and/or the process of applying for employment to be consistent with the requirements of this paragraph.

9. HPD agrees to designate a City and County of Honolulu employee or employees to deal with and address ADA compliance matters.

10. HPD agrees that all training manuals or written materials dealing with HPD policies and practices revised or created after the effective date of this Agreement shall be consistent with the provisions of this Agreement.

11. The actions described in ¶¶ 8 - 9 of this Agreement will be completed by HPD within thirty (30) days of the effective date of this Agreement.

12. HPD will notify the United States when it has completed the actions described in ¶¶ 8 - 9.

OTHER PROVISIONS

13. In consideration for the agreements, as set forth above, the Attorney General and the Department of Justice will not institute any civil action alleging employment discrimination on the basis of HPD's hiring policy with respect to applicants for the police department whose hearing loss is attenuated by use of a hearing aid. The Department of Justice may institute a civil action in the appropriate U.S. District Court to enforce this Agreement or the ADA, if the United States believes that this Agreement or any of its provisions has been violated. The United States may review compliance with this Agreement at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concern(s) with HPD and the parties will attempt to resolve the concern(s) in good faith. The United States will give HPD twenty-one (21) days from the date it notifies HPD of any breach of this Agreement to cure that breach, prior to instituting an enforcement action. Nothing in this Agreement changes HPD's obligation to otherwise comply with the requirements of the ADA.

14. Failure by the United States to enforce this entire Agreement or any of its provisions shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.

15. A signatory to this document in a representative capacity for either party represents that he or she is authorized to bind that party to this Agreement.

16. This Agreement is a public document and constitutes the entire agreement between the parties on the matters raised herein.

EFFECTIVE DATE/TERMINATION DATE

17. The effective date of this Agreement is the date of the last signature below.

18. The duration of this Settlement Agreement will be five (5) years from the effective date.

For the United States of America:

RALPH F. BOYD, JR.
Assistant Attorney General for Civil Rights

John L. Wodatch, Chief
L. Irene Bowen, Deputy Chief

By:

Eugenia Esch

Eugenia Esch, Attorney
Daniel I. Werfel, Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
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(202) 514-3816

Dated:

February 21, 2002

For the Honolulu Police Department:

By: Lee D. Donohue
Lee D. Donohue, Chief
Honolulu Police Department
530 South King Street
Honolulu, Hawaii 96813

Dated: 1-11-02

Approved as to form and legality:

By: Paul K. W. Au
Paul K. W. Au,
Deputy Corporation Counsel
City and County of Honolulu
530 South King Street
Honolulu, Hawaii 96813

Dated: 1/10/02